

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Marean	Team: Team # 3	CCRB Case #: 200605415	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/26/2006 11:45 PM	Location of Incident: in front of § 87(2)(b)	Precinct: 63	18 Mo. SOL 10/26/2007	EO SOL 10/26/2007	
Date/Time CV Reported Thu, 04/27/2006 12:25 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/27/2006 12:25 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Martinez	20291	922716	PBBS
2. POM Daniel Buonagurio	29293	931566	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Terrence Cane	29622	922068	PBBS

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Martinez	Abuse: PO Robert Martinez refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
B.POM Daniel Buonagurio	Discourtesy: PO Daniel Buonagurio gestured obscenely toward § 87(2)(b)	§ 87(2)(b)

Synopsis

The CCRB received this case via telephone on April 27th, 2006. On April 26th, 2006, at approximately 11:45 PM, Hughes § 87(2)(b) and his friend, § 87(2)(b) were sitting inside § 87(2)(b) parked vehicle in front of his residence, § 87(2)(b) in Brooklyn. Three officers, later identified as PO Robert Martinez, PO Terrance Cane and PO Daniel Buonagurio, then assigned to the 63rd Precinct, drove past the parked vehicle. PO Martinez noticed that the inspection sticker on § 87(2)(b) vehicle was expired. All three officers exited their vehicle and approached § 87(2)(b). PO Martinez asked § 87(2)(b) for his identification. § 87(2)(b) alleged that he asked PO Martinez for his name and shield number and that PO Martinez failed to provide the requested information (Allegation A). PO Martinez issued § 87(2)(b) two summonses, § 87(2)(b) § 87(2)(b) alleged that PO Buonagurio stuck his middle finger up at him as the officers were driving away from the location (Allegation B). § 87(2)(g)

Summary of Complaint

Civilian Statement

§ 87(2)(b), a § 87(2)(b)-old black male, provided a telephone statement on May 2, 2006 (Enc. 6A). He provided an official statement at the CCRB on May 4, 2006 (Enc. 7A-E). § 87(2)(g)

On April 26th, 2006, at about 11:45 PM, § 87(2)(b) left his residence of § 87(2)(b) in Brooklyn with his friend, § 87(2)(b). Both individuals got inside § 87(2)(b) vehicle, which is a gray, 2-door, 1993 Mazda MX6. § 87(2)(b) was planning on driving § 87(2)(b) to his home on § 87(2)(b), which is about a ten-minute drive from § 87(2)(b) residence. § 87(2)(b) vehicle was parked on the street in a legal parking space in front of § 87(2)(b) residence. § 87(2)(b) was in the driver's seat and § 87(2)(b) was in the passenger seat. § 87(2)(b) started the car and waited about two minutes to let it warm up.

As they were sitting inside the vehicle, a black Chevy Impala drove down the street, passed § 87(2)(b) vehicle, and then stopped alongside the door of the vehicle parked in front of § 87(2)(b). The Impala then reversed back and stopped alongside § 87(2)(b) vehicle. The vehicle then reversed further and parked behind § 87(2)(b) vehicle. Four white male officers exited the vehicle and approached § 87(2)(b) vehicle. § 87(2)(b) turned off his vehicle's ignition. PO #1 is a white male (upon filing this complaint, § 87(2)(b) described this officer as an Italian-looking male), late 20s, 5'10", 220 lbs., wearing a hooded sweatshirt and jeans, whom the CCRB later identified as PO Robert Martinez, then of the 63rd Precinct. PO #2 is a white male, 6'1", brown hair, slim build, wearing navy blue hooded sweatshirt and jeans, later identified by the CCRB as PO Terrence Cane, then of the 63rd Precinct. PO #3 is a white male, sergeant, late 40s, 5'9", wearing a dark jacket, later identified by the CCRB as PO Daniel Buonagurio of the 63rd Precinct. PO #4 is a white male, in plainclothes; § 87(2)(b) could not provide any more details concerning PO #4's appearance and the CCRB was unable to identify him. PO Martinez approached the left side of § 87(2)(b) vehicle, PO Cane approached the right side of the vehicle, PO Buonagurio remained behind the vehicle and PO #4 began circling around the vehicle. The officers had their hands on their weapons as they approached but they never drew their weapons. PO Martinez and PO Cane shone their flashlights inside § 87(2)(b) vehicle. When the officers noticed that the car was occupied, PO Martinez asked § 87(2)(b) to roll down

his window. § 87(2)(b) rolled his window down about 2-3 inches. As he was doing this, PO Martinez opened § 87(2)(b) door. § 87(2)(b) asked PO Martinez why he was stopping him. The officer did not provide an answer. § 87(2)(b) recognized the officers and said, "Oh, it's you guys again." The officers said, "I don't know you. Do you know me?" PO Martinez and PO Cane asked § 87(2)(b) who he was, what he was doing there, if he lived there, whose vehicle it was, if it was his vehicle, if the vehicle was stolen, if he had a license and if he had insurance. In his telephone statement, § 87(2)(b) alleged that PO Martinez asked him if he had identification on him and stated that if he did not, he would be arrested. § 87(2)(b) told PO Martinez that he wanted his name and shield number and said, "That goes for all of you." § 87(2)(b) stated that he assumed that all of the officers heard his request, but that he was looking directly at PO Martinez as he said this. None of the officers provided their names and shield numbers to § 87(2)(b). The officers stated that § 87(2)(b) windows were too dark and that is why they stopped him; the windows on § 87(2)(b) vehicle are clear and there is no tint on them. § 87(2)(b) pointed to his house and provided his New York State driver's license to the officers, which lists the address he pointed to. PO Martinez asked § 87(2)(b) whose car it was. § 87(2)(b) told him that the car was not registered to him and that it belonged to his sister-in-law, § 87(2)(b). PO Martinez asked him where she lived. § 87(2)(b) told him that she lived in the same house that he did. PO Martinez then asked § 87(2)(b) for the insurance and registration documentation. § 87(2)(b) refused to provide them and said that he did not know where they were and that he was not going to look for them. He told the officers that there was no need for him to look for it because the car was not moving. § 87(2)(b) told the officers to look it up on his computer. PO Martinez said the computer was broken. § 87(2)(b) insisted that he was not going to look for the documents. PO Martinez said that maybe they were in the glove compartment. § 87(2)(b) told PO Martinez that they were not in the glove compartment. PO Martinez asked § 87(2)(b) how he knew that the documents were not in the glove compartment if he did not look inside it and told him to open the glove compartment. § 87(2)(b) told PO Martinez that if he had authority over him and had a search warrant, then he could open the glove compartment, but that he, § 87(2)(b) was not going to. PO Martinez said, "We can do this two ways, the easy way or the hard way." The officer stated the hard way involved taking § 87(2)(b) down to the precinct. § 87(2)(b) told the officers not to do him any favors and said that if they could have arrested him for something, they would have done so and this conversation would not be happening. § 87(2)(b) told the officers that he was in front of his house and the car was not moving, therefore the officers had nothing to go on.

PO Martinez, PO Buonagurio and PO #4 went back to their vehicle. PO Cane may have lingered around the vehicle. § 87(2)(b) then called 911, who transferred him to Internal Affairs. § 87(2)(b) spoke with PO Phillips at IAB, a female officer. § 87(2)(b) described to PO Phillips what was happening. PO Phillips told § 87(2)(b) that she had called for the police to respond to the location. The officers returned to § 87(2)(b) vehicle and PO Martinez handed him two summonses, § 87(2)(b). The vehicle does have a front license plate but the inspection sticker was expired. The officers then got into their vehicle and drove away. When they were about 30 feet from § 87(2)(b) vehicle, an officer, determined by the CCRB investigation to be PO Buonagurio based on his admitted position within the vehicle, turned and stuck up his middle finger at § 87(2)(b) through the rear windshield.

Results of Investigation

Attempts to Contact Witnesses

§ 87(2)(b) was contacted via telephone on June 20th, 2006. An appointment was scheduled for June 23rd, 2006. On the morning of the appointment, § 87(2)(b) called and stated he would not be able to appear. He also stated that he would much rather provide a telephone statement. An appointment for a telephone interview was scheduled for June 26th at 11:00 AM. § 87(2)(b) did not answer the telephone for the interview on the agreed date and time. Further attempts to reach § 87(2)(b) failed to elicit a response.

Identification of Officers Interviewed

§ 87(2)(b) identified PO Martinez at the time he filed the complaint by observing PO Martinez' name and tax registry number on the summonses he received. During his statement, PO Martinez cited PO Cane and PO Buonagurio as his partners at the time of the incident, both of whom confirmed their involvement in the incident. All three officers denied that there was a fourth officer on the scene. Additionally, the roll call (Enc. 11A-B) indicates that only these three officers were assigned to vehicle § 87(2)(b).

Officer Statements

PO Robert Martinez, PO Daniel Buonagurio and PO Terrence Cane

PO Martinez, a Hispanic male, 6'1", 218 lbs., provided a statement at the CCRB on June 21, 2006 (Enc. 8A-D). PO Buonagurio, a white male, 5'7", 200 lbs., provided a statement at the CCRB on July 20, 2006 (Enc. 9A-D). PO Cane, a white male, 6'3", 220 lbs., provided a statement at the CCRB on July 21, 2006 (Enc. 10A-D). § 87(2)(g)

At the time of the incident, all three officers were assigned to the 63rd Precinct. PO Martinez and PO Cane have since been transferred to Patrol Borough Brooklyn South. On April 26, 2006, PO Martinez and PO Buonagurio worked from 9:30 PM until 6:05 AM. PO Cane worked from 9:30 PM until 2:30 PM April 27, 2006. All three officers were assigned to Anti-Crime, were dressed in plainclothes and assigned to vehicle § 87(2)(b) a black unmarked Chevy Impala. None of the officers had any memo book entries pertaining to this incident.

On April 26, 2006, at about 11:45 PM, the officers were on patrol. PO Martinez was the operator of the police vehicle, PO Cane was seated in the passenger seat and PO Buonagurio was seated in the rear seat of the vehicle. PO Martinez stated that § 87(2)(b) was inside his vehicle, which was parked on § 87(2)(b). § 87(2)(b) had one passenger with him. PO Martinez stated that as the officers drove past § 87(2)(b) vehicle, they noticed that the inspection sticker on § 87(2)(b) vehicle was expired. PO Buonagurio stated that he could not remember where exactly the officers first encountered § 87(2)(b) vehicle; he and PO Cane stated that they did not know why they stopped § 87(2)(b). PO Martinez then reversed his vehicle, drove again past § 87(2)(b) vehicle and stopped his vehicle behind § 87(2)(b). PO Martinez could not recall which officer made the decision to stop § 87(2)(b). PO Buonagurio and PO Cane stated that PO Martinez made the decision to stop him. All three officers exited their vehicle and approached § 87(2)(b) vehicle with their shields visible around their necks. PO Martinez approached the driver's side of the vehicle, PO Cane approached the passenger side and PO Buonagurio stood at the rear of his vehicle. PO Martinez stated that no officer had his hand on his weapon as he approached. PO Buonagurio stated that he could not remember specifically for this incident, but stated that when conducting a car stop, he usually approaches the subject vehicle with his hand on his weapon at his waist. PO Martinez could not remember specifically, but assumed that when he approached, he asked § 87(2)(b) for his license. Regardless, § 87(2)(b) provided his license. PO Martinez could not recall the details of the conversation he had with § 87(2)(b). PO Buonagurio stated he never spoke to § 87(2)(b). PO Cane spoke to the passenger of the vehicle; he could not remember the conversation. PO Cane stated that § 87(2)(b) was irate, although he could not describe what the driver was doing to indicate this. PO Cane did not fear for his safety. PO

Martinez could not remember if § 87(2)(b) ever asked the officers for their names and shield numbers; PO Cane and PO Buonagurio stated that § 87(2)(b) never asked them for their names or shield numbers.

The officers had never encountered § 87(2)(b) before. § 87(2)(b) never indicated that he recognized them. PO Martinez could not remember if he ever opened § 87(2)(b) door. PO Buonagurio and PO Cane stated that PO Martinez never opened the driver's door of § 87(2)(b) vehicle. PO Martinez could not remember if the vehicle's windows were tinted. No officer ever said, "We can do this two ways, the easy way or the hard way." PO Martinez never suspected that the vehicle was stolen. PO Martinez completed two summonses and handed them to § 87(2)(b). One summons was for § 87(2)(b); PO Martinez could not recall what the second summons was for. PO Cane and PO Buonagurio stated that they could not remember what the summonses were issued for. § 87(2)(b) appeared upset at receiving the two summonses.

The officers then returned to their vehicle. PO Martinez was still the operator, PO Cane was still in the passenger seat and PO Buonagurio was still in the backseat. No officer made any hand gestures toward § 87(2)(b) as they were leaving the location. No officer ever stuck up his middle finger at § 87(2)(b) as they drove away from the location.

Police Documentation

The summonses § 87(2)(b) received during the incident were requested from IAB. The request was returned, noting that the summonses were not on file (Enc. 14A).

The roll call (Enc. 11A-B) indicates that PO Martinez, PO Cane and PO Buonagurio were on duty and assigned to Anti-Crime at the time of the incident.

§ 87(2)(b)'s CCRB History

§ 87(2)(b) has not filed any additional CCRB complaints (Enc. 4A).

§ 87(2)(b) History of Criminal Convictions

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer CCRB History

PO Martinez, who has been employed by the NYPD for seven years, has one substantiated allegation, that of discourtesy – word, for CCRB case #200205713, for which he received a command discipline on September 30, 2003. PO Buonagurio, who has been employed by the NYPD for four years, has no substantiated CCRB allegations (Enc. 2A-3A).

Disposition of the Summonses

As of August 16, 2006, the Department of Finance indicates that § 87(2)(b) has an outstanding balance of \$43.00 to be paid for each of the two summonses he received on the date of incident (Enc. 12A-B).

Conclusions and Recommendations

Identification of Subject Officers

§ 87(2)(b) stated that he asked PO Martinez directly for his name and shield number and said, "That goes for all of you." While he stated he assumed that all the officers heard the request, he noted that he was mainly speaking to, and making eye contact with, PO Martinez as he said this. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Undisputed and Disputed Facts

It is not disputed that the officers approached § 87(2)(b) and § 87(2)(b) both of whom were seated in § 87(2)(b) parked vehicle. It is not disputed that the inspection sticker on § 87(2)(b) vehicle was expired at the time of the incident. It is not disputed that § 87(2)(b) was issued two summonses, § 87(2)(b)

§ 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(b)

stated that PO Martinez said, “We can do this the easy way or the hard way” and indicated that he could be taken to the stationhouse. However, applicable Vehicle and Traffic Law, Article 14: *Registration of Motor Vehicles*, stipulates, “Any magistrate, motor vehicle operator, peace officer, acting pursuant to his special duties, or police officer may request that the operator of any motor vehicle produce for inspection the certificate of registration for such vehicle and such operator shall furnish to such magistrate, inspector, peace officer or police officer any information necessary for the identification of such vehicle to its owner.” (Enc. 1A). § 87(2)(g)

Allegation A: PO Robert Martinez refused to provide his name and shield number to Hughes

§ 87(2)(b)

Allegation B: PO Daniel Buonagurio made an obscene gesture toward Hughes

§ 87(2)(b)

§ 87(2)(b) alleged that PO Martinez failed to provide his name and shield number upon his request and that PO Buonagurio stuck his middle finger up at him as the officers left the location. The officers denied all allegations.

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
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[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: